



4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0175]

**Hours of Service of Drivers: American Concrete Pumping Association (ACPA);
Application for Exemption**

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from the American Concrete Pumping Association (ACPA) for an exemption from the requirement that short-haul drivers utilizing the records of duty status (RODS) exception return to their normal work-reporting location within 12 hours of coming on duty. ACPA requests that concrete pump operators be allowed to use the short-haul exception but return to their work-reporting location within 14 hours instead of the usual 12 hours. The requested exemption would apply industry-wide to all concrete pump operators, concrete pumping companies, and drivers who operate concrete pumps. FMCSA requests public comment on ACPA's application for exemption.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*.]**

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2018-0175 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, please contact Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366-4225; E-mail: MCPSD@dot.gov. If you have

questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2018-0175), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, “FMCSA-2018-0175” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material

received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

ACPA seeks an exemption from the restriction of the RODS exception for short-haul operations available to drivers who return to their normal work reporting location and are released from work within 12 hours [49 CFR 395.1(e)(1)(ii)(A)]. Specifically, ACPA requests that concrete pump operators be treated the same as drivers operating ready-mixed concrete delivery vehicles as provided in § 49 CFR 395.1(e)(1)(ii)(B).

Section 395.1(e)(1)(ii)(B) allows drivers of ready-mixed concrete delivery vehicles to rely on the short-haul exception provided they return to their work-reporting locations and are released from work within 14 consecutive hours. The requested exemption would apply industry-wide to all concrete pump operators, concrete pumping companies, and drivers who deliver, set-up, and operate concrete pumps across the United States.

ACPA currently represents more than 600 member companies employing over 7,000 workers nationwide. The exemption would be applied to all interstate concrete pumper trucks and their operators. Although many of the trucks operate intrastate and would therefore not be covered by an FMCSA exemption, an unknown number of the pumping trucks are operated in metropolitan areas and do routinely cross State lines.¹

ACPA explained that, like ready-mixed concrete delivery trucks and asphalt pavement delivery trucks, concrete pumps work with a perishable product delivered on a just-in-time basis. Timing and scheduling are critical to ensure a high-quality result. Allowing concrete pump drivers to use the short-haul exception, but return to their reporting location within 14 hours instead of 12 hours, would harmonize the hours-of-service rules for drivers of concrete pumps with the rules for drivers of the vehicles that supply the concrete.

ACPA explained that only a small percentage of the concrete pump operator's time is spent driving. On average, concrete pump operators spend between 25-32% of their time driving during a shift, and average daily driving distances are 20-25 miles. A pump operator has plenty of rest time with breaks ranging from 33% - 55% of their total time pumping. The majority of an operator's time is spent waiting on ready-mixed concrete.

¹ FMCSA does not generally have jurisdiction over intrastate transportation; however, most States have commercial motor vehicle statutes and regulations that are compatible with Federal regulations. With few exceptions, an FMCSA exemption only applies to interstate transportation, although some States honor them for intrastate traffic.

ACPA further explained that a concrete pump cannot operate without a ready-mixed truck. Having conflicting requirements creates confusion on job sites. Clear and consistent requirements between the concrete pumps and the ready-mixed trucks will help ensure an equivalent level of safety on the job site. ACPA adds that concrete pumping and placement companies work in collaboration with ready-mixed companies. Scheduling local business contracts in compliance with State and Federal regulations is complicated, given that some concrete companies operate under different FMCSA rules.

ACPA asserts that the concrete pumping industry has a solid safety record. Break periods, spent waiting for the ready-mixed trucks deliveries, provide opportunity for concrete pump operators to rest and relax. The ACPA Operator Certification Program ensures, encourages, and educates the concrete pump operators on safe concrete pumping and placement procedures. These safety practices allow concrete operators to maintain their safety record through careful training and well-developed safety guidelines. Because of the concrete pump operators' training and preparation and numerous rest breaks, providing the additional 2 duty hours to concrete pump operators will have no impact on the level of safety provided under the short-haul exception. The requested exemption is for 5 years, with opportunity for renewals.

A copy of the ACPA's application for exemption is available for review in the docket for this notice.

Issued on: June 15, 2018.

Larry W. Minor,

Associate Administrator for Policy.

